City of Seattle

Department of Planning and Development
D. M. Sugimura, Director

CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Numbers: 3011581

Applicant Name: Julia Turney for King County

Addresses of Proposal: 201 Alaskan Way S.

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow a new 5,600 sq. ft. maintenance and moorage barge in an environmentally critical area (King County Passenger Ferries). Project includes an 800 sq. ft. angled gangway and (as many as) 12 steel pilings ranging from 24 in. - 36 in. in diameter adjacent to Pier 48. Total development is 7,500 sq. ft. Determination of Non-Significance has been prepared by King County, Department of Transportation.

The following approvals are required:

Shoreline Substantial Development Application to allow development in the UH Shoreline Environments.

SEPA - Conditioning pursuant to Seattle's SEPA policies. Chapter 25.05.600, Seattle Municipal Code. (Environmental documents prepared by King County).

SEPA DETERMINATION: [ ] Exempt [ ] DNS [ ] EIS

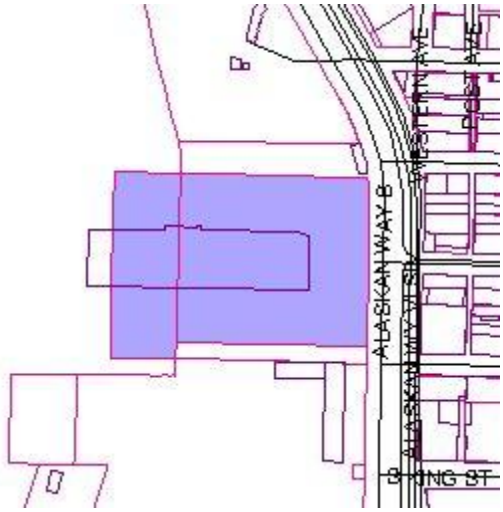
[X] DNS with conditions*

[ ] DNS involving non-exempt grading, or demolition, or another agency with jurisdiction.

* Determination of Non-significance (DNS) issued by King County, September 13, 2010.

BACKGROUND DATA

Site Description



The project site is located at Pier 48 along Alaskan Way South in Elliott Bay on the Seattle Waterfront. King County proposes to construct and locate a maintenance and moorage barge over-water north of Pier 48. A gangway will connect the barge to the shore about 45 feet north of Pier 48. The historic Washington Street Boat Landing is north of the subject site. The Washington State Ferries Terminal is located further north, at Pier 52. Port of Seattle properties are located south of the subject site.

Proposal Description

The King County Department of Transportation, Marine Division, proposes to construct and locate a maintenance and moorage barge at Pier 48 to support King County Passenger Ferry operations. The floating barge will measure 140 feet long by 40 feet wide and will provide moorage for up to three ferries, a workshop, supply storage, and office space (for maintenance and operations activities). A 100-foot long by eight-foot wide gangway will connect the barge to an existing pier on the dry-land portion of Pier 48. The barge will be constructed of steel and concrete and will be held in place by six 30-inch piles. (The number of piles has been reduced since the public notice was published.) Water, sewer, and electric service utility connections will reach the barge by way of the gangway. The gangway may be held in place by two additional 24-inch steel piles (if needed). The project includes parking for one maintenance vehicle on the dry-land portion of the site. Security fencing is also proposed. Access to the site will be via an existing driveway on the Pier 48 property.

The barge will be constructed off-site and towed to Pier 48, and will be located in water of about 30 to 36 feet deep. When complete, the barge will provide moorage for up to three vessels.

The Pier 48 location is considered to be an "interim" site by King County, and the barge facility may be relocated to a yet-to-be-determined site in three to five years. If and when relocation occurs, the barge, gangway and piles will be removed and the pile removal areas will be capped with clean sand. Since temporary uses are not addressed in the Shoreline Code, relocation of the barge is not a requirement of this permit.

Public Comments

The official comment period for this project ended on November 26, 2010. No public comments were received.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The proposal is located within the UH (Urban Harborfront) Shoreline Environment as designated by the Seattle Shoreline Master Program (SSMP). The Shoreline Master Program, Chapter 23.60 of the Seattle Municipal Code, regulates use and development in the City's shoreline districts to implement the policy and provisions of the Shoreline Management Act of 1971 and the Shoreline Goals and Policies.

The SMC requires that a shoreline permit be obtained prior to the undertaking of any substantial development within a shoreline environment. SMC Section 23.60.030 includes criteria for evaluating a shoreline permit. A substantial development permit shall be issued only when the development proposed is consistent with:

A. The policies and procedures of Chapter 90.58 RCW;
B. The regulations of this Chapter; and
C. The provisions of Chapter 173-27 WAC.

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58.RCW

The State of Washington Shoreline policies (RCW Chapter 90.58) provide for the control of pollution and prevention of damage to the natural environment, and to protect the resources and ecology of the shoreline over the long term. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. The Shoreline Management Act of 1971 provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle and other jurisdictions with shorelines adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60 that also incorporates the provisions of Chapter 173.27 WAC. Development on the shorelines of the State is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions.

The City of Seattle Shoreline policies incorporate these goals by reference and include area objectives pursuant to these goals. These policies contemplate protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

As discussed below, the City's Shoreline policies encourage passenger-only ferries on the Central Waterfront. The proposal to locate a maintenance and moorage barge for King County Passenger Ferries is consistent with these policies. Thus, this proposal is consistent with the policies and procedures of the RCW Chapter 90.58.

B. THE REGULATIONS OF CHAPTER 23.60

The regulations of Section 23.60.064 SMC require that the proposed use: 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) be permitted in the shoreline environment and the underlying zoning district and 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be required.

The proposed maintenance and moorage barge for King County Passenger Ferries and accessory uses are permitted outright as a water-dependent public facility over-water in the Urban Harborfront (UH) environment (SMC 23.60.660). Uses and development standards in the underlying Downtown Harborfront 1-45 zone are determined by the Seattle Shoreline Master Program (per SMC 23.49.300 and SMC 23.49.302).

SMC 23.60.004 - Shoreline Policies

Policies governing approval of development in shoreline districts are set out in the Land Use Element of the Seattle Comprehensive Plan and SMC Section 23.60.004. Seattle's Comprehensive Plan Shoreline Goals and Policies encourage the siting of water-dependent uses on waterfront lots (Land Use Policy 232). LU Goal 46 reads: "Develop a transportation network that supports and enhances use of and access to the shorelines."

More specifically, with regard to ferries: Land Use Policy 240 states: "Encourage the maintenance and future development of inter-modal commuter ferry services, complementary to other public transportation systems, from both intra-city locations and regional activity centers."

Regarding passenger ferries, Land Use Policy 257(6) states: "Passenger Terminals: Maintain and expand the opportunity for residents and visitors for convenient travel by ship to local and distant ports. Encourage more passenger-only ferries and cruise ships on the Central Waterfront."

This proposed will provide additional facilities for passenger ferries and is therefore consistent with adopted Comprehensive Plan policies.

Shoreline Development Standards

The proposed maintenance barge and gangway are located in the UH Shoreline Environment. Pursuant to the Seattle Shoreline Master Plan, the proposed action is subject to:

1. the general development standards (SMC 23.60.152); and
2. the development standards for uses in the UH environment (SMC 23.60.690 through 23.60.704).

1. SMC 23.60.152 - General Development Standards for all Shoreline Environments

General standards for all uses and development in all shoreline environments are established in SMC Section 23.60.152. Generally, these standards require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices for the specific use or activity, in order to have minimal impact on the shoreline environment. The following general development standards are relevant to the proposed project:

A. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as paving and berming of drum storage areas, fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.

B. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.

C. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, vessel repair facilities, marine service stations and any use regularly servicing vessels with petroleum product capacities of ten thousand five hundred (10,500) gallons or more.

D. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leakproof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

G. All shoreline developments and uses shall control erosion during project construction and operation.

H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.

J. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.

K. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.

L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.

N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.

O. Navigation channels shall be kept free of hazardous or obstructing development or uses.

The King County Marine Division (KCMD) issued a Determination of Non-significance for this project on September 21, 2010. Proposed habitat mitigation measures for the project to offset the negative impacts on aquatic life and of the placement of in-water and overwater structures at this location include removal of seafloor creosote piling stubs and capping with clean sand, as well as removing an abandoned boat, piles lying on the seafloor and trash and debris. The removal of these items will improve subtidal habitat conditions for a number of aquatic species that utilize this project area, especially juvenile chinook salmon and bull trout.

The following Best management Practices (BMPs) and other conservation measures are also proposed to avoid and minimize negative impacts due to construction and operation of this facility and prevent debris, fuels, and other deleterious material from entering the water at this location:

- In-water work will occur during the approved in-water work window for the area.
- The gangway will be grated to the extent feasible to allow light penetration to the aquatic habitat below.
- Hollow steel piles will be used instead of treated wood to reduce potential contaminants in the water column and substrate.
- Piles will be installed to the greatest extent possible with a vibratory hammer to minimize impulse noise that could injure fish or other aquatic species.
- Pile installation will comply with guidance developed by the National Marine Fisheries Service for sound attenuation, including use of bubble curtains or pile sleeve devices where appropriate.
- Pile driving will not be initiated, or if initiated will be ceased, if killer whale, Stellar sea lions, or other mammals are sighted within the vicinity of the project.
- Construction of the proposed project will comply with water quality restriction imposed by Ecology, which state that turbidity in marine waters exceeding state water quality standards will not extend beyond a 150-foot mixing zone radius during construction (WAC 173-201A-210(1)(E)(I)(D)).
- The contractor will be responsible for the preparation and implementation of a Spill Prevention Control and Countermeasure (SPCC) Plan to be used for the duration of the project in accordance with WSDOT standard specification section 1.7.15 and permit requirements. The Plan will be submitted to the project engineer prior to the

commencement of any construction activities. A copy of the Plan with any updates will be maintained at the work site by the contractor.

- Overwater pile vibrating/driving equipment will use vegetable-based lubricants.
- Excess or waste materials will not be disposed of or abandoned waterward of OHWM or allowed to enter waters of the United States.
- In-water removal of debris for mitigation will be conducted slowly to limit turbidity to the extent possible.
- Barges will not be allowed to ground out during construction.
- No petroleum products, fresh cement, lime or concrete, chemicals, or other toxic or deleterious materials will be allowed to enter surface waters.
- The contractor will be required to retrieve any floating debris generated during construction using a skiff and a net. Debris will be disposed of at an appropriate upland facility.
- Erosion control measures will be addressed in a Temporary Erosion control and Sediment Control (TESC) Plan prepared by the contractor and adhered to during construction activities.
- A lighting plan for the facility, shown on plan sets, will be installed that utilizes low-wattage, LED and shielded lighting to minimize negative impacts from spillage of nighttime artificial light into the aquatic environment.
- During operation of the facility, secondary containment for tanks in the barge hull and on-deck product transfer areas will be provided and appropriate screening, as well as leak detection and inspection protocols, will be provided to ensure no incidental spills from the service lines located on the gangway will occur in Elliott Bay.
- If and when relocation of the barge facility occurs, the barge, gangway and piles will be removed and the pile removal areas will be capped with clean sand.

These mitigation measures and BMPs will be required as conditions of approval of this permit.

Construction activity will be restricted to timing limitations set forth in the Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife.

2. SMC 23.60.690 through 23.60.704 - Development Standards in the UH Environment

As noted above, the proposed maintenance and moorage barge and accessory uses are permitted outright as a water-dependent public facility over-water in the Urban Harborfront (UH) environment (SMC 23.60.660).

Development standards in the UH environment regulate structure height, lot coverage, side setbacks, view corridors, moorage requirements, regulated public access, and historic character review. The project meets all applicable development standards as discussed, below.

The height requirement for waterfront lots in the UH environment is 45 feet (SMC 23.60.692). The barge and structures located on it have a height of approximately 25 feet above OHW, well below the maximum permitted.

Lot coverage generally allows up to 50 percent coverage of the submerged land of any lot in the UH, with additional coverage allowed for floats for open wet moorage (SMC 23.60.694). An estimated 37 percent of the submerged land on the lot will be covered with the addition of the proposed barge, piers and gangway, well under the 50 per cent allowed.

Moorage floats are exempt from the side setback requirement (SMC 23.60.696).

A view corridor of not less than 30 percent of the width of the lot shall be provided and maintained. The view corridor may be at two locations provided that each location has a minimum width of 20 feet, and the following may be located in a required view corridor: a) storage of boats under repair, b) open wet moorage, and c) outdoor storage of items accessory to water-dependent or water-related use. Further, one-half of an adjacent street right-of-way may be used in meeting view corridor requirements (SMC 23.60.698). The project is located south of the Washington Street right-of-way. Based on the plans, the view corridor requirement is met.

Moorage requirements in the UH may be met by using moorage as an integral part of their operation (SMC 23.60.700). As a moorage barge, the proposal meets this requirement.

The requirement for public access may be waived for projects which are wholly water dependent if: 1) the applicant can show that the provision of public access could prevent effective operation of the water-dependent use and/or present a potential safety hazard for the public; and 2) alternative access criteria of Section 23.60.160 cannot be satisfied (SMC 23.60.702). SMC 23.60.160. H.3(a) states that public access shall not be required when the cost of providing public access is unreasonably disproportionate to the total cost of the proposed development. The applicant has responded to these criteria, as follows:

> "We propose that the project meets the public access exception noted in C1. The maintenance and moorage barge function is to repair and maintain the King County Passenger Ferries. Maintenance activities on the gangway and barge include heavy equipment movement, use of machinery, welding and other activities that would present a potential safety hazard for the public.
>
> The Pier 48 uplands are a parking and staging facility for the AWV replacement project and there is no public access to the Pier 48 uplands during replacement project construction. The overwater pier area has been fenced and locked due to the presence of voids behind the seawall and structural stability of the pier, conditions that present a potential safety hazard for the public.
>
> We propose that the project meets the General Exception for Regulated Public Access in H 3a. Pier 48 is not owned by King County and only a limited area will be leased for the duration of the Alaskan Way Viaduct Replacement Project (AWV). The barge will be located at Pier 48 for approximately three to five years. There is no public access to the Pier 48 property and the cost of providing a public access facility for this project is unreasonably disproportionate to the total cost of the proposed development."

We concur with King County's reasoning with regard to the project's qualification for the exemptions provided for public access requirements.

Therefore, this project is consistent with the development standards of the UH Shoreline Environment.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

Chapter 173-27 WAC sets forth permit requirements for development in shoreline environments, and gives the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The proposed shoreline substantial development permit for the proposed maintenance and moorage barge and accessory uses is **CONDITIONALLY GRANTED.**

Shoreline Substantial Development conditions are listed below.

ANALYSIS – STATE ENVIRONMENTAL POLICY ACT (SEPA)

Environmental impacts of the proposal have been analyzed in environmental documents prepared by King County Department of Transportation, Marine Division, including a SEPA Environmental Checklist dated September 9, 2010, a Determination of Non-Significance dated September 21, 2010. Additional environmental information provided by King County includes a Biological Assessment and technical memoranda prepared by Anchor QEA, LLC (September and June 2010, respectively) and a Washington State Joint Aquatic Resources Permit Application (JARPA) Form (October 6, 2010).

Seattle Municipal Code (SMC) Section 25.05.660 provides that proposals can be conditioned or denied in order to mitigate environmental impacts. All conditions must be related to impacts identified in the environmental documents, based on adopted policies, be reasonable and capable of being accomplished. This proposal is reviewed under that substantive SEPA authority.

Disclosure of the potential impacts from this project was made in the environmental documents listed above. This information and supplemental information provided by the applicant (plans, written descriptions of the project) and the experience of this agency with review of similar projects form the basis for this analysis and conditioning.

The SEPA Overview Policy (SMC 25.05.665) establishes the relationship between codes, policies, and environmental review. Specific policies for specific elements of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation"* subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered.

Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term impacts are anticipated from the proposal and are discussed below.

Short-term Impacts

The following temporary or construction-related impacts are expected: temporary increased water turbidity levels, decreased air quality due to increased dust and other suspended air particulates during excavation, filling and transport of materials to and from the site as well as due to vehicle exhaust from operation of construction equipment; increased noise and vibration from pile driving, construction operations and equipment and slightly increased traffic and parking demand from construction personnel traveling to and from the work site.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); and State Air Quality Codes administered by the Puget Sound Clean Air Agency (air quality). In addition Federal and State regulations and permitting authority (Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife) are effective to control short-term impacts on water quality. Compliance with these codes and/or ordinances will lessen the environmental impacts of the proposed project.

The applicant's SEPA Checklist and Biological Assessment disclose that the proposed construction work will take place in the waters of Elliott Bay and in the near shore environment. With the proposed work taking place in and near water, there exists the potential for debris and other deleterious material to enter the water during this proposed work as well as other impacts due to construction-related activities such as noise levels during pile driving. A list of mitigation measures and BMPs is provided above in the discussion of general development standards in the shoreline code that address these potential impacts. The mitigation measures listed will be required as conditions of approval of this project.

The discussion below regarding plants and animals that may utilize the project area provides more details about potential impacts to these species, both short and long term, and measures incorporated into the project design to address these impacts.

Construction material and equipment pose some potential danger of water and near shore contamination and shoreline erosion. The contamination and erosion could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to commencing construction an emergency containment plan and procedures be developed and all necessary equipment be stocked on the site.

Construction activity will be restricted to timing limitations set forth in the Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife.

No further SEPA conditioning of potential short-term impacts appears to be warranted.

Long Term Impacts

Long-term or use related impacts are also anticipated from the proposal and include: increased human activity in the near-shore and shoreline environment; increased light in the near-shore aquatic environment; and increased noise from human activities. These long-term impacts are not considered significant because they are minor in scope. Notwithstanding the determination of non-significance, the following elements of the environment merit more detailed discussion.

Plants and Animals

A Biological Assessment (BA) was prepared by the applicants to determine whether and how populations of Endangered Species Act (ESA)-listed and proposed species that may occur in the project area would be affected by the proposed project. These species identified in the BA include:

- Chinook salmon (*Oncorhynchus tshawytscha)*
- Steelhead (*Oncorhynchus mykiss*)
- Green sturgeon (*Acipenser medirostris*)
- Pacific elachon (*Thaleichthys pacificus*)
- Bocaccio (*Sebastes paucispinus*)
- Yelloweye rockfish (*Sebastes ruberrimus*)
- Canary rockfish (*Sebastes pinninger*)
- Killer whale (*Orcinus orca*)
- Humpback whale (*Megaptera novaeangliae*)
- Steller sea lion (*Eumetopias jubatus*)
- Bull trout (*Salvelinus confluentus*)
- Marbled murrelet (*Brachyramphus marmoratus*)

No threatened or endangered plant species are known to be on or near the site. Based on an underwater video survey discussed in the BA, no eelgrass was found in the project area. The project area does contain federally designated critical habitat for three of the animal species listed above: Puget Sound Chinook salmon, Southern Resident killer whales, and Coastal-Puget Sound Bull trout.

Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

Table 1 below provides a summary of effect determination findings in the BA for the ESA listed and proposed species that potentially occur in the project area.

Table 1
ESA Listed and Proposed Species and Critical Habitat in the Project Area from Biological Assessment (Sept. 2010)[1]

Species	Status	Agency	Effects Determination	Critical Habitat Status	Critical Habitat Effects Determination
Chinook salmon (*Oncorhynchus tshawytscha*) Puget Sound ESU	Threatened	NMFS[2]	LAA	Designated	NLAA
Steelhead (*Oncorhynchus mykiss*) Puget Sound DPS	Threatened	NMFS	NLAA	None proposed or designated	N/A
Green sturgeon (*Acipenser medirostris*) Southern DPS	Threatened	NMFS	No effect	None in Puget Sound	N/A
Pacific eulachon (*Thaleichthys pacificus*) Southern DPS	Threatened	NMFS	No effect	None proposed or designated	N/A
Bocaccio (*Sebastes paucispinus*) Georgia Basin DPS	Endangered	NMFS	NLAA	None proposed or designated	N/A
Yelloweye rockfish (*Sebastes ruberrimus*) Georgia Basin DPS	Threatened	NMFS	NLAA	None proposed or designated	N/A
Canary rockfish (*Sebastes pinninger*) Georgia Basin DPS	Threatened	NMFS	NLAA	None proposed or designated	N/A
Killer whale (*Orcinus orca*) Southern Resident DPS	Endangered	NMFS	NLAA	Designated	NLAA
Humpback whale (*Megaptera novaeangliae*)	Endangered	NMFS	No effect	None proposed or designated	N/A
Steller sea lion (*Eumetopias jubatus*)	Threatened	NMFS	No effect	None in Washington State	N/A
Bull trout (*Salvelinus confluentus*) Coastal-Puget Sound DPS	Threatened	USFWS[3]	LAA	Designated	NLAA
Marbled murrelet (*Brachyramphus marmoratus*)	Threatened	USFWS	No effect	None in Action Area	No effect

Notes:
NLAA – may affect, not likely to adversely affect
LAA – may affect, likely to adversely affect
ESU – Evolutionary Significant Unit
DPS – Distinct Population Segment
NMFS – National Marine Fisheries Service
USFWS – U.S. Fish and Wildlife Service
N/A – not applicable
1 – USFWS identifies the additional species of Canada lynx (*Lynx Canadensis*), gray wolf (*Canis lupus*), grizzly bear (*Ursus arctos*), and Northern spotted owl (*Strix occidentalis caurina*) to be present in King County (USFWS 2007); however, these species are not addressed in this BA due to lack of suitable habitat within and adjacent to the Action Area.

Chinook salmon stocks that may be found in the project area include Issaquah Creek summer/fall Chinook, North Lake Washington tributary Summer/Fall Chinook, Cedar River summer/Fall Chinook, Green/Duwamish River Summer/Fall Chinook, and Newaukum Creek Summer/Fall Chinook. The Duwamish River, which lies approximately one mile south of the project area, is the closest river system that supports Puget Sound Chinook salmon. Juvenile Chinook salmon are found along nearshore shorelines in the project area from late January through September, with peak outmigration usually occurring in June and July. Adult Chinook could potentially be present in the vicinity of the project area, but the greatest abundance would be outside the nearshore area in deeper offshore areas between early summer and early fall as they return from the ocean to the Duwamish River.

The BA determined that the project may adversely affect Chinook salmon in the project area primarily due to construction impacts (i.e., elevated noise during pile driving, localized substrate disturbance, water turbidity and general noise) and longer term impacts due to placement of in-water and overwater structures and artificial lighting spilling into the water, which could have negative impacts on migration and feeding activities and behavior for Chinook and increase risk of predation, but none of these impacts would be significant due to avoidance and minimization measures, BMPs for construction and operation, and habitat mitigation measures (discussed above in the section on shoreline general development standards).

With respect to impacts on killer whales, the project will occur in water depths extending from the shoreline to -36 feet MLLW, which overlaps with areas designated as critical habitat for Southern Resident killer whales. The BA determined that the project may adversely affect killer whales primarily due to temporary impacts during construction: elevated noise during pile driving; temporary impacts on salmon (described above), a major prey species, as well as minor water quality impacts such as increased turbidity during pile driving and construction, but none of these impacts would be significant due to avoidance and minimization measures, BMPs for construction and operation, and habitat mitigation measures (discussed above in the section on shoreline general development standards).

With respect to bull trout, the BA states that while specific data on bull trout presence in the project vicinity is not well documented, it is expected that adult and sub-adult bull trout could use the project area for foraging, migration, and overwintering. The short and longer term impacts to bull trout from this project are expected to be similar to that discussed above for Chinook salmon, with none of these impacts expected to be significant for the same reasons due to avoidance and minimization measures, BMPs for construction and operation, and habitat mitigation measures (discussed above in the section on shoreline general development standards).

The BA described potential impacts from this project on other species, listed above in Table 1, as well as other plant and animal species in the project area, but the analysis in the BA determined that there would be no effect on some of these species from the project or no significant impact due to the habitat mitigation measures, construction and operational BMPs and other measures designed to avoid and minimize the impacts of this project, as discussed above.

As provided by SMC 25.05.350 C, and 25.05.675 N 2 c, the lead agency may specify mitigation measures on a proposal that would allow the lead agency to issue a Determination of Non-Significance (DNS). These mitigation measures can be in the form of clarification of the

proposal, changes to the proposal, or the project may be conditioned to include the mitigation measures. The King County Transportation Department, Marine Division, as the lead agency, has included mitigation measures in the project and issued a DNS on this project.

Other Impacts

Several adopted Codes and Ordinances and other Agencies will appropriately mitigate the other use-related adverse impacts created by the proposal. Specifically, these are the Puget Sound Air Pollution Control Agency (increased airborne emissions); and the Seattle Energy Code (long-term energy consumption).

The other impacts not noted here as mitigated by codes, ordinances, or conditions (increased ambient noise; increased pedestrian traffic; increased demand on public services and utilities) are not sufficiently adverse to warrant further mitigation by conditions.

CONDITIONS – SEPA and SHORELINE

Conditions of Approval Prior to Building Permit Issuance:

1. Applicants shall include on building permit plan sets the Spill Prevention Control and Countermeasure (SPCC) Plan, discussed above and in documents provided by the applicant (BA and SEPA Checklist).

2. The mitigation measures and Best Management Practices (BMPs) proposed by the applicant and described on pages 6 and 7 of this document must be shown on the plans.

Conditions of Approval During Construction:

The following condition(s) to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

3. The applicant shall implement the Spill Prevention Control and Countermeasure (SPCC) Plan and the mitigation measures and Best Management Practices (BMPs) proposed by the applicant and described on pages 6 and 7 of this document.

Conditions Prior to Building Permit Final/C of O:

4. Applicants shall provide a video survey of project area (or other format acceptable to DPD) that documents to DPD that habitat mitigation actions described above and on plan sets (i.e., removal of seafloor creosote piling stubs and capping with clean sand, as well as removing an abandoned boat, piles lying on the seafloor and trash and debris) have been completed.

Conditions for Life of Project:

5. Applicants shall abide by all operational BMPs discussed in Biological Assessment, SEPA checklist and SPCC for the protection of the aquatic environment, including immediate removal of any man-made debris or deleterious that enters the water as a result of the operation of this facility.

Signature: (signature on file) Date: May 16, 2011
Molly Hurley, Senior Land Use Planner
Department of Planning and Development

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